

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5326

62nd Legislature
2011 Regular Session

Passed by the Senate April 18, 2011
YEAS 44 NAYS 2

President of the Senate

Passed by the House April 1, 2011
YEAS 61 NAYS 32

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5326** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5326

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, Zarelli, Kohl-Welles, Nelson, Rockefeller, and White)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to negligent driving resulting in substantial
2 bodily harm, great bodily harm, or death of a vulnerable user of a
3 public way; amending RCW 46.63.070; reenacting and amending RCW
4 46.20.342; adding a new section to chapter 46.61 RCW; creating a new
5 section; prescribing penalties; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW
8 to read as follows:

9 (1) A person commits negligent driving in the second degree with a
10 vulnerable user victim if, under circumstances not constituting
11 negligent driving in the first degree, he or she operates a vehicle, as
12 defined in RCW 46.04.670, in a manner that is both negligent and
13 endangers or is likely to endanger any person or property, and he or
14 she proximately causes the death, great bodily harm, or substantial
15 bodily harm of a vulnerable user of a public way.

16 (2) The law enforcement officer or prosecuting authority issuing
17 the notice of infraction for an offense under this section shall state
18 on the notice of infraction that the offense was a proximate cause of

1 death, great bodily harm, or substantial bodily harm, as defined in RCW
2 9A.04.110, of a vulnerable user of a public way.

3 (3) Persons under the age of sixteen who commit an infraction under
4 this section are subject to the provisions of RCW 13.40.250.

5 (4) A person found to have committed negligent driving in the
6 second degree with a vulnerable user victim shall be required to:

7 (a) Pay a monetary penalty of five thousand dollars, which may not
8 be reduced to an amount less than one thousand dollars; and

9 (b) Have his or her driving privileges suspended for ninety days.

10 (5) In lieu of the penalties imposed under subsection (4) of this
11 section, a person found to have committed negligent driving in the
12 second degree with a vulnerable user victim who requests and personally
13 appears for a hearing pursuant to RCW 46.63.070 (1) or (2) may elect
14 to:

15 (a) Pay a penalty of two hundred fifty dollars;

16 (b) Attend traffic school for a number of days to be determined by
17 the court pursuant to chapter 46.83 RCW;

18 (c) Perform community service for a number of hours to be
19 determined by the court, which may not exceed one hundred hours, and
20 which must include activities related to driver improvement and
21 providing public education on traffic safety; and

22 (d) Submit certification to the court establishing that the
23 requirements of this subsection have been met within one year of the
24 hearing.

25 (6) If a person found to have committed a violation of this section
26 elects the penalties imposed under subsection (5) of this section, the
27 court may impose the penalties under subsection (5) of this section and
28 the court may assess costs as the court deems appropriate for
29 administrative processing.

30 (7) Except as provided in (b) of this subsection, if a person found
31 to have committed a violation of this section elects the penalties
32 under subsection (5) of this section but does not complete all
33 requirements of subsection (5) of this section within one year of the
34 hearing:

35 (a)(i) The court shall impose a monetary penalty in the amount of
36 five thousand dollars, which may not be reduced to an amount less than
37 one thousand dollars; and

1 (ii) The person's driving privileges shall be suspended for ninety
2 days.

3 (b) For good cause shown, the court may extend the period of time
4 in which the person must complete the requirements of subsection (5) of
5 this section before any of the penalties provided in this subsection
6 are imposed.

7 (8) An offense under this section is a traffic infraction. To the
8 extent not inconsistent with this section, the provisions of chapter
9 46.63 RCW shall apply to infractions under this section. Procedures
10 for the conduct of all hearings provided for in this section may be
11 established by rule of the supreme court.

12 (9) If a person is penalized under subsection (4) of this section,
13 then the court shall notify the department, and the department shall
14 suspend the person's driving privileges. If a person fails to meet the
15 requirements of subsection (5) of this section, the court shall notify
16 the department that the person has failed to meet the requirements of
17 subsection (5) of this section and the department shall suspend the
18 person's driving privileges. Notice provided by the court under this
19 subsection must be in a form specified by the department.

20 (10) Any act prohibited by this section that also constitutes a
21 crime under any other law of this state may be the basis of prosecution
22 under such other law notwithstanding that it may also be the basis for
23 prosecution under this section.

24 (11) For the purposes of this section:

25 (a) "Great bodily harm" and "substantial bodily harm" have the same
26 meaning as provided in RCW 9A.04.110.

27 (b) "Negligent" has the same meaning as provided in RCW
28 46.61.525(2).

29 (c) "Vulnerable user of a public way" means:

- 30 (i) A pedestrian;
- 31 (ii) A person riding an animal; or
- 32 (iii) A person operating any of the following on a public way:
 - 33 (A) A farm tractor or implement of husbandry, without an enclosed
 - 34 shell;
 - 35 (B) A bicycle;
 - 36 (C) An electric-assisted bicycle;
 - 37 (D) An electric personal assistive mobility device;
 - 38 (E) A moped;

- 1 (F) A motor-driven cycle;
- 2 (G) A motorized foot scooter; or
- 3 (H) A motorcycle.

4 **Sec. 2.** RCW 46.20.342 and 2010 c 269 s 7 and 2010 c 252 s 4 are
5 each reenacted and amended to read as follows:

6 (1) It is unlawful for any person to drive a motor vehicle in this
7 state while that person is in a suspended or revoked status or when his
8 or her privilege to drive is suspended or revoked in this or any other
9 state. Any person who has a valid Washington driver's license is not
10 guilty of a violation of this section.

11 (a) A person found to be (~~an~~) a habitual offender under chapter
12 46.65 RCW, who violates this section while an order of revocation
13 issued under chapter 46.65 RCW prohibiting such operation is in effect,
14 is guilty of driving while license suspended or revoked in the first
15 degree, a gross misdemeanor. Upon the first such conviction, the
16 person shall be punished by imprisonment for not less than ten days.
17 Upon the second conviction, the person shall be punished by
18 imprisonment for not less than ninety days. Upon the third or
19 subsequent conviction, the person shall be punished by imprisonment for
20 not less than one hundred eighty days. If the person is also convicted
21 of the offense defined in RCW 46.61.502 or 46.61.504, when both
22 convictions arise from the same event, the minimum sentence of
23 confinement shall be not less than ninety days. The minimum sentence
24 of confinement required shall not be suspended or deferred. A
25 conviction under this subsection does not prevent a person from
26 petitioning for reinstatement as provided by RCW 46.65.080.

27 (b) A person who violates this section while an order of suspension
28 or revocation prohibiting such operation is in effect and while the
29 person is not eligible to reinstate his or her driver's license or
30 driving privilege, other than for a suspension for the reasons
31 described in (c) of this subsection, is guilty of driving while license
32 suspended or revoked in the second degree, a gross misdemeanor. For
33 the purposes of this subsection, a person is not considered to be
34 eligible to reinstate his or her driver's license or driving privilege
35 if the person is eligible to obtain an ignition interlock driver's
36 license but did not obtain such a license. This subsection applies

1 when a person's driver's license or driving privilege has been
2 suspended or revoked by reason of:

3 (i) A conviction of a felony in the commission of which a motor
4 vehicle was used;

5 (ii) A previous conviction under this section;

6 (iii) A notice received by the department from a court or diversion
7 unit as provided by RCW 46.20.265, relating to a minor who has
8 committed, or who has entered a diversion unit concerning an offense
9 relating to alcohol, legend drugs, controlled substances, or imitation
10 controlled substances;

11 (iv) A conviction of RCW 46.20.410, relating to the violation of
12 restrictions of an occupational driver's license, a temporary
13 restricted driver's license, or an ignition interlock driver's license;

14 (v) A conviction of RCW 46.20.345, relating to the operation of a
15 motor vehicle with a suspended or revoked license;

16 (vi) A conviction of RCW 46.52.020, relating to duty in case of
17 injury to or death of a person or damage to an attended vehicle;

18 (vii) A conviction of RCW 46.61.024, relating to attempting to
19 elude pursuing police vehicles;

20 (viii) A conviction of RCW 46.61.212(4), relating to reckless
21 endangerment of emergency zone workers;

22 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

23 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a
24 person under the influence of intoxicating liquor or drugs;

25 (xi) A conviction of RCW 46.61.520, relating to vehicular homicide;

26 (xii) A conviction of RCW 46.61.522, relating to vehicular assault;

27 (xiii) A conviction of RCW 46.61.527(4), relating to reckless
28 endangerment of roadway workers;

29 (xiv) A conviction of RCW 46.61.530, relating to racing of vehicles
30 on highways;

31 (xv) A conviction of RCW 46.61.685, relating to leaving children in
32 an unattended vehicle with motor running;

33 (xvi) A conviction of RCW 46.61.740, relating to theft of motor
34 vehicle fuel;

35 (xvii) A conviction of RCW 46.64.048, relating to attempting,
36 aiding, abetting, coercing, and committing crimes;

37 (xviii) An administrative action taken by the department under
38 chapter 46.20 RCW; ((~~or~~))

1 (xix) A conviction of a local law, ordinance, regulation, or
2 resolution of a political subdivision of this state, the federal
3 government, or any other state, of an offense substantially similar to
4 a violation included in this subsection; or

5 (xx) A finding that a person has committed a traffic infraction
6 under section 1 of this act and suspension of driving privileges
7 pursuant to section 1 (4)(b) or (7)(a)(ii) of this act.

8 (c) A person who violates this section when his or her driver's
9 license or driving privilege is, at the time of the violation,
10 suspended or revoked solely because (i) the person must furnish proof
11 of satisfactory progress in a required alcoholism or drug treatment
12 program, (ii) the person must furnish proof of financial responsibility
13 for the future as provided by chapter 46.29 RCW, (iii) the person has
14 failed to comply with the provisions of chapter 46.29 RCW relating to
15 uninsured accidents, (iv) the person has failed to respond to a notice
16 of traffic infraction, failed to appear at a requested hearing,
17 violated a written promise to appear in court, or has failed to comply
18 with the terms of a notice of traffic infraction or citation, as
19 provided in RCW 46.20.289, (v) the person has committed an offense in
20 another state that, if committed in this state, would not be grounds
21 for the suspension or revocation of the person's driver's license, (vi)
22 the person has been suspended or revoked by reason of one or more of
23 the items listed in (b) of this subsection, but was eligible to
24 reinstate his or her driver's license or driving privilege at the time
25 of the violation, or (vii) the person has received traffic citations or
26 notices of traffic infraction that have resulted in a suspension under
27 RCW 46.20.267 relating to intermediate drivers' licenses, or any
28 combination of (c)(i) through (vii) of this subsection, is guilty of
29 driving while license suspended or revoked in the third degree, a
30 misdemeanor. For the purposes of this subsection, a person is not
31 considered to be eligible to reinstate his or her driver's license or
32 driving privilege if the person is eligible to obtain an ignition
33 interlock driver's license but did not obtain such a license.

34 (2) Upon receiving a record of conviction of any person or upon
35 receiving an order by any juvenile court or any duly authorized court
36 officer of the conviction of any juvenile under this section, the
37 department shall:

1 (a) For a conviction of driving while suspended or revoked in the
2 first degree, as provided by subsection (1)(a) of this section, extend
3 the period of administrative revocation imposed under chapter 46.65 RCW
4 for an additional period of one year from and after the date the person
5 would otherwise have been entitled to apply for a new license or have
6 his or her driving privilege restored; or

7 (b) For a conviction of driving while suspended or revoked in the
8 second degree, as provided by subsection (1)(b) of this section, not
9 issue a new license or restore the driving privilege for an additional
10 period of one year from and after the date the person would otherwise
11 have been entitled to apply for a new license or have his or her
12 driving privilege restored; or

13 (c) Not extend the period of suspension or revocation if the
14 conviction was under subsection (1)(c) of this section. If the
15 conviction was under subsection (1)(a) or (b) of this section and the
16 court recommends against the extension and the convicted person has
17 obtained a valid driver's license, the period of suspension or
18 revocation shall not be extended.

19 **Sec. 3.** RCW 46.63.070 and 2006 c 327 s 7 are each amended to read
20 as follows:

21 (1) Any person who receives a notice of traffic infraction shall
22 respond to such notice as provided in this section within fifteen days
23 of the date of the notice.

24 (2) If the person determined to have committed the infraction does
25 not contest the determination the person shall respond by completing
26 the appropriate portion of the notice of infraction and submitting it,
27 either by mail or in person, to the court specified on the notice. A
28 check or money order in the amount of the penalty prescribed for the
29 infraction must be submitted with the response. When a response which
30 does not contest the determination is received, an appropriate order
31 shall be entered in the court's records, and a record of the response
32 and order shall be furnished to the department in accordance with RCW
33 46.20.270.

34 (3) If the person determined to have committed the infraction
35 wishes to contest the determination the person shall respond by
36 completing the portion of the notice of infraction requesting a hearing
37 and submitting it, either by mail or in person, to the court specified

1 on the notice. The court shall notify the person in writing of the
2 time, place, and date of the hearing, and that date shall not be sooner
3 than seven days from the date of the notice, except by agreement.

4 (4) If the person determined to have committed the infraction does
5 not contest the determination but wishes to explain mitigating
6 circumstances surrounding the infraction the person shall respond by
7 completing the portion of the notice of infraction requesting a hearing
8 for that purpose and submitting it, either by mail or in person, to the
9 court specified on the notice. The court shall notify the person in
10 writing of the time, place, and date of the hearing.

11 (5)(a) Except as provided in (b) (~~and~~), (c), and (d) of this
12 subsection, in hearings conducted pursuant to subsections (3) and (4)
13 of this section, the court may defer findings, or in a hearing to
14 explain mitigating circumstances may defer entry of its order, for up
15 to one year and impose conditions upon the defendant the court deems
16 appropriate. Upon deferring findings, the court may assess costs as
17 the court deems appropriate for administrative processing. If at the
18 end of the deferral period the defendant has met all conditions and has
19 not been determined to have committed another traffic infraction, the
20 court may dismiss the infraction.

21 (b) A person may not receive more than one deferral within a seven-
22 year period for traffic infractions for moving violations and more than
23 one deferral within a seven-year period for traffic infractions for
24 nonmoving violations.

25 (c) A person who is the holder of a commercial driver's license or
26 who was operating a commercial motor vehicle at the time of the
27 violation may not receive a deferral under this section.

28 (d) A person who commits negligent driving in the second degree
29 with a vulnerable user victim may not receive a deferral for this
30 infraction under this section.

31 (6) If any person issued a notice of traffic infraction:

32 (a) Fails to respond to the notice of traffic infraction as
33 provided in subsection (2) of this section; or

34 (b) Fails to appear at a hearing requested pursuant to subsection
35 (3) or (4) of this section;

36 the court shall enter an appropriate order assessing the monetary
37 penalty prescribed for the traffic infraction and any other penalty

1 authorized by this chapter and shall notify the department in
2 accordance with RCW 46.20.270, of the failure to respond to the notice
3 of infraction or to appear at a requested hearing.

4 NEW SECTION. **Sec. 4.** This act applies to infractions committed on
5 or after the effective date of this section.

6 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2012.

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